

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

FEDERAL TRADE COMMISSION,

STATE OF ILLINOIS, and

STATE OF MINNESOTA,

Plaintiffs,

v.

GTCR, LLC,

GTCR BC HOLDINGS, LLC, and

SURMODICS, INC.,

Defendants,

Case No. 1:25-cv-02391

**DECLARATION OF JONATHAN KLARFELD IN SUPPORT OF NON-PARTY
BECTON, DICKINSON AND COMPANY'S UNOPPOSED MOTION TO SEAL AND
FOR *IN CAMERA* TREATMENT OF ADDITIONAL DEPOSITION DESIGNATIONS**

Pursuant to 28 U.S.C. § 1746, I, Jonathan Klarfeld, declare as follows:

1. I am a partner at Ropes & Gray LLP, serving as outside counsel to Becton, Dickinson and Company ("BD"), a non-party in the above-captioned action. I submit this declaration in support of BD's unopposed motion to seal and for *in camera* treatment.
2. Through conversations with BD employees directly knowledgeable about the information contained in the materials and testimony at issue, and my involvement in BD's

participation as a non-party to this action, I have personal knowledge of the facts set forth below, and if called upon, can and will testify competently thereto.¹

Testimony Produced in this Litigation and Procedural History

3. On August 14, 2025, BD filed its Motion to Seal and for in Camera Treatment of two documents—documents beginning with Bates numbers BD00000002 and BD00000655—and certain portions of deposition testimony produced in this litigation.² See Dkt. Nos. 287; 296.

4. On August 20, 2025, the Court granted BD's motion. See Dkt. No. 375. Specifically, the Court recognized that these materials “contain information about BD's products, vendor relationships, sales, and internal business operations and processes, which qualify as confidential commercial information and/or trade secrets” and, if released, “would harm BD while giving its competitors an unfair advantage.” *Id.*

5. On August 22, 2025, BD's outside counsel reached out to the Federal Trade Commission (“FTC”) by email, asking if it intended to counter-designate testimony from the Moll Deposition.

6. On August 22, 2025, the FTC replied, indicating that the FTC intends to counter-designate the following pages and lines of the Moll Deposition transcript for possible use as evidence at the Hearing, most likely in written submissions: 24:12-26:16; 31:2-31:19; 32:6-33:6; 33:18-35:13; 35:15-37:8; 37:21-38:4; 40:18-41:18; 41:15-42:11; 43:5-22; 44:18-45:14; 45:22-46:4; 46:18-47:16; 49:3-23; 50:8-14; 50:23-24; 54:4-55:12; 57:24-58:1; 58:5-16; 60:10-61:2;

¹ Defined terms used but not defined herein have the same meaning as assigned in the Declaration of Jonathan Klarfeld in Support of Non-Party Becton, Dickinson and Company's Unopposed Motion to Seal and for *In Camera* Treatment. See Dkt. Nos. 287, Attachment # 1; 296, Attachment # 1.

² This included the following pages/lines: 33:7-17; 48:21-49:2; 56:15-57:18; 58:17-24; 59:1-16; 60:4-9; 66:13-20; 75:21-76:3; 76:24-78:5; 79:18-80:6; 83:24-84:12; 84:23-85:9; 90:3-18; 91:1-92:7; 93:9-20; 96:15-23; 97:4-18; 98:3-4; 98:7-21; 100:20-24; 101:18-102:1; 102:6-12; 102:16-20; 103:13-104:4; 104:21-105:7; 110:5-21; 113:12-19; 114:3-7; 114:14-17; 115:9-116:8; 117:21-118:10; 121:21-123:9; 124:25-126:8; 128:8-130:4; 130:11-22; 131:1-13; 131:19-23; 131:25-132:8; 132:17-133:7; 133:17-20; 147:22 148:5; 151:15-152:15; 154:3-155:3; 158:9-24.

61:17-62:9; 64:7-65:1; 66:6-12; 68:7-69:7; 78:6-20; 80:22-81:8; 81:12-14; 81:16-82:9; 85:10-22; 86:1-4; 88:12-18; 92:13-23; 92:25-93:7; 94:3-23; 95:1-6; 95:13-22; 97:19-98:2; 99:18-100:9; 102:13-15; 103:2-12; 104:8-20; 107:15-20; 108:5-20; 110:22-111:17; 114:21-115:8; 124:4-24; 130:5-10; 133:8-16; 135:12-136:10; 146:13-147:21; 148:23-149:22; 150:3-16; 151:7-14; 152:19-153:16; 153:18-21; 155:17-156:15; 157:16-158:8; 158:25-159:11. The FTC further indicated that Defendants intend to counter-counter-designate the following pages and lines of the Moll Deposition transcript for possible use as evidence at the Hearing, most likely in written submissions as well: 42:12-13; 42:16-43:3; 88:19-89:14; 95:23-96:14; 150:17-22; 156:16-21. Lastly, it was pointed out that Plaintiffs and Defendants jointly designated the following pages and lines of the Moll Deposition transcript for possible use as evidence at the Hearing: 27:14-17; 27:19 (collectively with the above-identified designations by Plaintiffs and Defendants, the “Additional Designations”). *See* Exhibit 1.³ BD’s outside counsel subsequently confirmed with Defendants that the counter-counter designations and joint designations identified by Plaintiffs, were correct.

7. On August 25, 2025, outside counsel for BD informed Plaintiffs’ and Defendants’ counsel that BD intended to move to seal/for *in camera* treatment of certain portions of the additionally designated sections of the Moll Deposition transcript. Both Plaintiffs’ and Defendants’ counsel agreed that they do not oppose this motion.

Likely Harm to BD Resulting from Production of its Documents and Testimony

³ In Exhibit 1, BD provides extracts of the pages of the Moll Deposition transcript identifying the Additional Designations for which BD is seeking *in camera* treatment, as well as the prior designated testimony at issue in BD’s Motion to Seal and for in Camera Treatment, for convenience. On those pages, BD highlights the specific lines it now seeks to maintain the confidentiality over through its motion. Plaintiffs’ designated sections appear in blue highlighting, Defendants’ sections appear in yellow highlighting, and jointly designated sections appear in orange highlighting. We do not include the new portions of the Moll Deposition transcript the Plaintiffs and Defendants have notified BD of their intent to use, for which we do not seek *in camera* treatment. Those other portions are: 16:15-20; 17:25-18:10; 18:24-19:1; 19:23-20:2; 32:6-23; 40:18-41:2; 41:15-19; 94:3-94:14; 133:22-134:2; 146:3-5; 150:17-22.

8. Upon information and belief, the Additional Designations contain confidential and sensitive information about [REDACTED]

[REDACTED] which, if made public, would harm BD's competitive interests.

9. BD00000002 is an Excel spreadsheet that was compiled solely for the purposes of responding to Plaintiffs' and Defendants' subpoenas in this litigation. As relevant here and in addition to other confidential topics, BD00000002 provides [REDACTED]

[REDACTED]

[REDACTED]. BD00000002 was granted *in camera* treatment in the Court's August 20 order.

10. BD000000655 is a report prepared by BD's R&D team which evaluates [REDACTED]

[REDACTED]

[REDACTED] BD000000655 discusses confidential topics such as [REDACTED]

[REDACTED]

[REDACTED] BD000000655 was granted *in camera* treatment in the Court's August 20 order.

11. Plaintiffs' and Defendants' Additional Designations of the Moll Deposition transcript cover the same sensitive information discussed in BD00000002 and BD000000655, as well as discuss [REDACTED]

[REDACTED].

12. BD closely guards the proprietary information discussed in the Additional Designations. [REDACTED]

[REDACTED]

[REDACTED] According to discussions with BD personnel, it was not shared with any non-company personnel who were not also acting as BD's agents (e.g., a third-party testing company).

13. If the information contained in the Additional Designations were to be disclosed, BD would suffer significant commercial harm.

14. [REDACTED]

[REDACTED]

[REDACTED]

15. According to discussions with BD personnel, revealing [REDACTED]

[REDACTED]

[REDACTED]

16. According to discussions with BD employees, the insights provided in the Additional Designations [REDACTED]

I declare under the penalty of perjury under the laws of the United States of America that the above is true and correct.

Executed on August 27, 2025

/S/ Jonathan Klarfeld

JONATHAN KLARFELD